



## **DECISION NOTICE**

### **For Draft Environmental Assessment for Proposed Mineral Rights Acquisition: Spotted Dog Wildlife Management Area**

Montana Fish, Wildlife & Parks  
Region 2  
3201 Spurgin Road, Missoula MT 59804  
406-542-5500

September 27, 2012

## **DESCRIPTION OF PROPOSED ACTION**

Montana Fish, Wildlife and Parks (FWP) proposes to purchase from the Pauly Family, the mineral rights that are held by the Pauly Family on 14,149 acres within FWP's recently acquired 37,877-acre<sup>1</sup> Spotted Dog Wildlife Management Area (WMA). The WMA is located west of the Continental Divide in Powell County and northeast of Deer Lodge and is part of the Upper Clark Fork River watershed. The Pauly homestead is within the WMA and owned by FWP.

In the 2010 acquisition from the Rock Creek Cattle Ranch, FWP received nearly all the mineral rights to 10,408 acres and 50% of the mineral rights to 14,149 acres within its new WMA (see Figure 1 in the environmental assessment for the mineral rights ownership map). The other 50% interest in the mineral rights to the 14,149 acres is owned by the Pauly family, and that 50% is now proposed for purchase by FWP. DNRC owns the oil, gas, and coal rights to 2,419 acres within the family's subsurface interest and 640 acres under FWP fee title portion of the WMA. The federal government retained the subsurface rights to the remaining 5,307 acres. Owners of mineral rights retain the right to enter the property and remove the mineral resource, regardless of surface impacts, at any future time.

The objectives for the Spotted Dog land acquisition included:

- Permanently protect fish & wildlife resources;
- Enhance critical winter habitat for elk, mule deer, and antelope;
- Maintain migratory patterns to and from the National Forest for a regionally significant elk herd;

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<sup>1</sup> For Spotted Dog WMA, FWP has fee-title to 27,616.35 acres and leases 10,260.91 acres of intermingled Montana DNRC lands.

- Provide lasting public access to previously inaccessible lands;
- Maintain landscape connectivity between the Blackfoot and Clark Fork watersheds;
- Replace lost and injured natural resources that were the subject of *Montana v. ARCO* (<https://doj.mt.gov/wp-content/uploads/2011/06/settlementagreement01.pdf>).

The affected acres (areas for which the mineral rights would be acquired) are in Powell County and encompass the eastern half of the WMA, which is a mix of native grasslands and conifer forest. This portion of the WMA is interspersed with DNRC and Forest Service owned lands.

Township & Range of the affected acres:

T8N, R9W: All of Sections 1 and 2  
 T9N, R7W: All of Sections 7, 18, 19, 21, 29, 31, 33, and 35  
 Portions of Sections 20, 27, and 30  
 T9N, R8W: All of Sections 1, 11, 13, 14, 23, 24, 25, and 36  
 Portions of Sections 2, 22, 26, and 27  
 T9N, R9W: All of Sections 35  
 T10N, R8W: Portion of Section 35

## ALTERNATIVE TO THE PROPOSED ACTION

### **No Action: FWP would not purchase the Pauly mineral rights under Spotted Dog WMA.**

Under the No Action Alternative, FWP would not purchase the mineral rights owned by the Pauly family under a portion of Spotted Dog WMA. The family would likely continue to consider other selling options and potential buyers for their interests. The possibility would exist that mineral exploration and extraction could be developed in the future by the Paulys or another party, which could jeopardize existing wildlife, fisheries, and recreation resource values.

## PUBLIC PROCESS

A Draft Environmental Assessment (EA) was completed by FWP for the proposed Mineral Rights Acquisition for Spotted Dog WMA and released for public comment on July 5, 2012; it was available through August 3, 2012.

FWP mailed 67 copies of the EA, and emailed approximately 42 notifications of the EA's availability, to adjacent landowners and interested individuals, groups and non-FWP agencies. The EA was available for public review and comment on FWP's web site (<http://fwp.mt.gov/>, "Public Notices") beginning July 5 through August 3. (The direct web link for the EA is [http://fwp.mt.gov/news/publicNotices/environmentalAssessments/acquisitionsTradesAndLeases/pn\\_0114.html](http://fwp.mt.gov/news/publicNotices/environmentalAssessments/acquisitionsTradesAndLeases/pn_0114.html).)

Legal notices of the proposal and Draft EA availability were published in the following newspapers (dates): *Anaconda Leader* (July 6, 13), *Independent Record* (Helena; July 5, 12), *Missoulian* (July 5, 12), *Montana Standard* (Butte; July 5, 12), and *Silver State Post* (Deer

Lodge; July 11, 18). FWP issued a statewide news release regarding this proposal, and posted it on FWP's web site (<http://fwp.mt.gov/>, "News"), beginning July 11, 2012.

The deadline for FWP to receive comments was at 5:00 p.m. on August 3, 2012.

## SUMMARY OF PUBLIC COMMENT

FWP received 9 emailed or phoned comments (Appendix A), representing 10 people (1 each from Billings, Butte, Deer Lodge, Helena, Missoula, and Plains; 2 from Townsend; and 1 unknown). Six of the 9 comments (representing 6 people) specifically supported the mineral rights acquisition. One of the 9 comments (representing 1 person) did not specifically support or oppose the acquisition but stated, "This makes sense to me." Two comments (representing 3 people) opposed the acquisition.

Following are specific comments and questions raised by the public and FWP's responses.

Comment. You might want to think about acquiring the mineral rights and then trading the mineral rights to the State of Montana (school trust lands). The Department could condition the trade on a no surface rights provision. Such a trade could expand the area of the WMA, block up the minerals for the State of Montana school trust and with a "no surface disturbance" clause protect the value of the WMA. It would also mean that the Department would not have to deal with mineral issues in the future.

*FWP Response. The potential for developing economically feasible minerals is minimal on most of the property, so a land exchange probably would not be proposed by DNRC or FWP based on minerals alone. That said, if that potential were to change it is something we may consider. If this currently proposed mineral acquisition is approved, FWP will hold all the minerals except those held by DNRC so the surface resource values will be protected under FWP ownership.*

*It should be noted that DNRC is "managing the surface and mineral resources . . . of state trust lands to produce revenue for the benefit of Montana's public schools and other endowed institutions" (ARM 36.1.101(5)(b)(iv)). FWP's mission includes providing "for the stewardship of the fish, wildlife, parks, and recreational resources of Montana, while contributing to the quality of life for present and future generations." Therefore, producing direct<sup>2</sup> revenue from FWP-owned lands is not a priority and could conflict with FWP's mandates. FWP does work with DNRC to require "no surface occupancy" on those lands owned by FWP where FWP does not hold the mineral rights and mineral (generally oil and gas) are being utilized.*

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<sup>2</sup> Relative to indirect revenue, the US Fish & Wildlife Service's newly released 12<sup>th</sup> national survey estimated that residents and nonresidents spent \$1.4 billion on wildlife-related activities (fishing, hunting, wildlife watching) in Montana in 2011 (2011 National Survey of Fishing, Hunting and Wildlife-Related Recreation; National Overview, August 2012, Preliminary Findings. <http://onlinepressroom.net/fws/> accessed 26 Sep 2012 ).

Comment. FWP is going into things that don't pertain to FWP. Ultimately you're making more wilderness, which we don't need. We need the tax dollars to stay in the county/s.

*FWP Response. We appreciate your point of view.*

Comment. Public money and actions are better spent on these sorts of issues [weed control, road repair, safer docks] than purchasing mineral rights.

*FWP Response. We appreciate your point of view.*

Comment. We have asked FWP for years to take care of the carp in Canyon Ferry Reservoir (to no avail).

*FWP Response. This comment is beyond the scope of this project, but it will be forwarded to the FWP fisheries biologist (Eric Roberts, Region 4, phone 406-495-3272 in Helena) for Canyon Ferry Reservoir.*

Question. How much will be paid?

*FWP Response. The price for the acquisition of the mineral rights would be \$70,745 (Draft EA, Sec. 2.1, pg. 7).*

Question. Where will the funds be coming from?

*FWP Response. Funding for the proposed mineral rights acquisition would come from FWP's Habitat Montana Program (Draft EA, Sec. 1.4, pg. 7).*

## **DECISION**

Based upon the Environmental Assessment and the applicable laws, regulations, and policies, I have determined that the proposed action will not have measureable negative effects on the human and physical environments associated with this project. No concerns were raised that would bring the environmental analysis into question. Therefore, I conclude the EA is the appropriate level of analysis and the preparation of an Environmental Impact Statement is unnecessary.

The acquisition of mineral rights would consolidate the surface and subsurface estates, which many in the public already take for granted. By acquiring subsurface rights, FWP seeks to protect and conserve the surface as wildlife habitat and a recreational resource, and limit any future surface removal by another party. Failure to acquire these rights would leave the Spotted Dog WMA and FWP's investment potentially vulnerable to the independent objectives and direction of the holder of the mineral rights.

Therefore, I chose the proposed action alternative in the EA. By notification of this Decision Notice, the draft EA is hereby made the final EA. The draft EA with Decision Notice may be viewed at or obtained from FWP at the address on page 1. The EA is still available for review on FWP's web site (<http://fwp.mt.gov/>) under "Public Notices" (enter "habitat enhancement" in Search Public Notices).

In consideration of these facts, I am pleased to recommend to the Fish, Wildlife & Parks Commission that it approve the proposed acquisition of the Spotted Dog WMA mineral rights.

/s/ Mack Long  
Mack Long, Regional Supervisor  
Region 2 FWP

9-27-12  
Date

APPENDIX A. All comments received by FWP on the proposed mineral rights acquisition for Spotted Dog WMA. Comments received via email (E) and phone (Ph).

Com- menter #	Via	Para- graph	Comment
1	E	1	I am in favor of the Department purchasing the mineral rights. The cost is relatively low compared to the disruption that could be caused if mineral exploration or development occurred.
		2	It should be recognized that mineral owners have the right to use part of the surface for exploration and development and surface rights are secondary to those mineral rights.
		3	You might want to think about acquiring the mineral rights and then trading the mineral rights to the State of Montana (school trust lands). The Department could condition the trade on a no surface rights provision.
		4	Such a trade could expand the area of the WMA, block up the minerals for the State of Montana school trust and with a no surface disturbance clause protect the value of the WMA. It would also mean that the Department would not have to deal with mineral issues in the future.
		5	I appreciate the Department's work on this issue.
2	E		I fully support MT FWP's efforts to acquire the mineral rights to Spotted Dog WMA.
3	E	1	Considering the fear is "low to medium" and "moderate," I would recommend you say no to spending \$70,745.
		2	The words you use are "likely," "could contribute," "may be." Sounds to me you really don't have an issue.
		3	Spend it wisely, please, elsewhere
4	Ph	1	We [wife & husband] feel that FWP does not need to be buying mineral rights. FWP is going into things that don't pertain to FWP.
		2	We're opposed to this acquisition.
		3	Ultimately you're making more wilderness, which we don't need.
		4	We need the tax dollars to stay in the county/s.
		5	We often see thistles, etc. along the roads and wonder why isn't something being done about the weeds?
		6	We have asked FWP for years to take care of the carp in Canyon Ferry Reservoir (to no avail).
		7	And we have asked for the roads around Canyon Ferry (to the fishing or public sites) to be fixed (potholes and wash-boarding). [At this point the FWP person taking these comments mentioned that she's in Region 2, Missoula, and not familiar with this other area--as to which of these sites might be FWP's vs. another agency/s'. The commenter then said that the road to the Silos site was in good condition.]
		8	The dock at Nelson Reservoir is not safe.
		9	Public money is better spent on these sorts of issues [lines 5-8, above] than purchasing mineral rights.
		10	FWP needs to be a better steward of what it already has.
5	E		I fully support the proposal to acquire mineral rights under the Spotted Dog Wildlife Management Area. Acquisition will ensure that no future mineral development will jeopardize the values for which the land was originally purchased to protect.
6	E		Yes!!!! Please purchase the mineral rights to this wonderful area. this would be a great use of public funds to preserve Montana for future generations. Yes!!!! Purchase the mineral rights
7	E		A good thing to do!
8	E	1	I just read the announcement regarding purchasing mineral rights to the Spotted Dog property from the Pauly family. While this makes sense to me, I have a couple of questions.
		2	About how much is the price that will be paid?
		3	Where will the funds be coming from?
9	Ph	1	I've hunted, fished and hiked in Spotted Dog WMA.
		2	It would be highly inappropriate for mineral development to occur on this land.
		3	I'm strongly in favor of FWP purchasing the mineral rights for this WMA.
		4	In light of the fracking going on elsewhere in MT, something like fracking on the WMA would ruin it.